

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE TRICOR INDIRECT PURCHASER  
ANTITRUST LITIGATION

C.A. No. 05-360 (SLR)  
(consolidated)

THIS DOCUMENT RELATES TO:  
PAINTERS' DISTRICT COUNCIL NO.30  
HEALTH AND WELFARE FUND and  
RICHARD G. WILDE, C.A. No. 05-360 (SLR)

VISTA HEALTH PLAN, INC. and ROSS LOVE,  
C.A. No. 05-365 (SJR)

PENNSYLVANIA EMPLOYEES BENEFIT  
TRUST FUND, C.A. No. 05-390 (SLR)

ALLIED SERVICES DIVISION WELFARE  
FUND and HECTOR VALDES,  
C.A. No. 05-394 (SLR)

DIANA KIM, C.A. No. 05-426 (SLR)

ELAINE M. PULLMAN, NEIL PERLMUTTER,  
HELENA PURLMUTTER and LULA RAMSEY,  
C.A. No. 05-450 (SLR)

PHILADELPHIA FEDERATION OF TEACHERS  
HEALTH AND WELFARE FUND,  
C.A. No. 05-467 (SLR)

CINDY CRONIN, C.A. No. 05 482 (SLR)

CHARLES SHAIN and SANDRA KRONE,  
C.A. No. 05-475 (SLR)

LOCAL 28 SHEET METAL WORKERS,  
C.A. No. 05-516 (SLR)

ALBERTO LITTER, C.A. No. 05-695 (SLR)

**[PROPOSED] ORDER DIRECTING INDIRECT PURCHASER  
CLASS COUNSEL TO PROVIDE NOTICE TO THE CLASS**

At Wilmington this \_\_\_ day of \_\_\_\_\_, 2008, having considered Indirect Purchaser Class Plaintiffs' Motion for Approval of Proposed Plan of Notice [D.I. \_\_\_], and

WHEREAS, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, this Court has certified the Indirect Purchaser Class ("IP Class") by Order of August 18, 2008 [D.I. 430]; and

WHEREAS, Class Counsel has submitted a proposed notice plan to the Court on August 25, 2008 [D.I. \_\_\_];

IT IS HEREBY ORDERED THAT:

1. The Court approves the form and content of the *Notice of Pending of Class Action* attached as Exhibit A.

2. Complete Claim Solutions, Inc. is designated as Notice Administrator.

3. On or before \_\_\_\_\_, 2008, the Notice Administrator shall:

a. establish a TriCor Litigation webpage on its website ([www.CompleteClaimSolutions.com/tricor](http://www.CompleteClaimSolutions.com/tricor)) for IP Class members to learn about the litigation. The webpage must include access to the *Notice of Pending of Class Action* attached as Exhibit A. The webpage may also include pleadings, orders of the Court, and any updates on the progress of the litigation;

b. establish and staff a toll-free hotline number to answer questions from IP Class members and to respond to requests for copies of the Proposed Notice;

c. together with IP Class Counsel, issue a business wire press release in a form substantially similar to Exhibit B hereto; and

d. cause the *Notice of Pending of Class Action* attached as Exhibit A to be

sent by first-class mail to all third-party payors included in its database.

4. The Notice Administrator shall provide, by first-class mail or otherwise, a copy of the full *Notice of Pending of Class Action* attached as Exhibit A to any IP Class member who requests such a copy.

5. Pursuant to Fed. R. Civ. P. 23(c)(2)(A), the Court finds that notice plan provided for herein is appropriate notice to the IP Class.

6. On or before \_\_\_\_\_, 2008, IP Class Counsel shall file an affidavit or declaration demonstrating that notice has been provided to the IP Class in the manner required herein.

7. The deadlines set forth in this Order may be altered or expanded upon a showing of good cause.

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SUE L. ROBINSON  
UNITED STATES DISTRICT JUDGE

# EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

## **If You Paid for the Drugs TriCor, Lofibra, Antara, Triglide or generic versions,**

### **You May be Affected By a Class Action Lawsuit**

*This Notice is being provided by Order of the U.S. District Court. It is not a solicitation from a lawyer.  
You are not being sued.*

- **There is a Class Action pending in the U.S. District Court for the District of Delaware, named In re TriCor Indirect Purchasers Antitrust Litigation, Civil Action No. 05-360(SLR). The lawsuit concerns individuals and entities that paid for some or all of the retail purchase price of prescription drugs containing fenofibrate.**
- **Fenofibrate is found in the brand-name drugs TriCor, Lofibra, Antara and Triglide, as well as generic versions of these drugs. Fenofibrate is used to lower cholesterol and triglycerides.**
- **You are automatically part of this Class Action if you fit the description above.**

**PLEASE READ THIS NOTICE CAREFULLY.** It will tell you what the case is about and who is included in the Class Action. It will also tell you where you can get additional information and help.

**What is the lawsuit about?** Defendants, Abbott Laboratories, Fournier Industrie et Sante, and Laboratoires Fournier, S.A., sell TriCor, a brand-name drug that contains fenofibrate. Plaintiffs allege that Defendants illegally prevented competitors from selling cholesterol-lowering drugs that contain fenofibrate, and deprived doctors and consumers of an opportunity to choose lower-priced, generic versions of the drugs.

The alleged unlawful conduct involves several different steps, including:

1. *Delaying* generic competitors from bringing to market lower-priced generic versions of TriCor;
2. *Shifting* the market to “new and improved” formulations that were not materially different from the initial versions; and then
3. *Withdrawing* their initial formulations from healthcare databases.

Because the initial formulation-branded product no longer exists, the new, lower cost version cannot be marketed as a generic, and cannot be automatically substituted for the more expensive brand name drug by pharmacists as is required or allowed in most states.

Plaintiffs allege that Defendants’ conduct caused Class Members to pay too much for fenofibrate products. ***No question is raised about the safety or effectiveness of TriCor or other fenofibrate products.***

Plaintiffs who brought the lawsuit make several different legal claims:

- They ask for an injunction under federal antitrust laws to prevent Defendants from continuing their unlawful conduct. This claim will go to trial on November 3, 2008.

• They ask for damages under state antitrust or consumer protection laws, and the common law of unjust enrichment. The damage claims have been stayed by the court and have not yet been certified for class treatment. All Defendants deny that Plaintiffs' claims are true and dispute all of the allegations in the lawsuits. You can read the about the claims in this lawsuit by going to the website, [www.completeclaimssolutions.com/tricor](http://www.completeclaimssolutions.com/tricor).

**Does this mean I'm going to receive money?** It is too soon to know. So far, the Court has allowed the Class to ask only for an order under federal law ending the alleged misconduct. The Court has not decided the issues in this case, and has not yet decided whether to allow the class to ask for damages under state laws.

**Who is part of the Class?** By order dated August 18, 2008, the U.S. District Court for the District of Delaware certified a Class, meaning that the Plaintiffs in the case will act not just on behalf of themselves, but on behalf of everyone in the following group:

All persons or entities in the United States and its territories who purchased, paid and/or reimbursed for products containing fenofibrate, including TriCor tablets and TriCor capsules, intended for consumption by themselves, their families, or their members, employees, plan participants and beneficiaries or insureds during the period from April 9, 2002 through such time in the future as Defendants' illegal conduct has ceased.

Excluded from the Class are all Defendants and their respective subsidiaries and affiliates, all governmental entities (except for government-funded employee benefit funds), and all persons or entities that purchased fenofibrate products: (i) for purposes of resale or (ii) directly from any of the Defendants.

You can review the Court's Decision and Order at the website, [www.completeclaimssolutions.com/tricor](http://www.completeclaimssolutions.com/tricor).

**Why did I get this Notice?** You received this because you may be an individual consumer or a third-party payor such as a health plan or an insurance company that may have paid for the brand-name drugs TriCor, Lofibra, Antara and Triglide, or generic versions of any of those drugs.

**If I paid for drugs containing Fenofibrates, am I a member of the Class?** Yes. You are automatically part of the Class and you will be represented by the lawyers for the Class as approved by the Court.

**Can I exclude myself or "opt-out" of the Class?** No. Under the Court rules, where the class is certified for the purpose of seeking a court order against wrongdoing, class members do not have the ability to exclude themselves from the class ("opt-out"). A right to opt out would come when and if the Court approves a class to ask for damages.

**Will I be personally responsible for any costs or attorneys' fees in connection with of this lawsuit?** No. If the Court rules for the Class, Class Counsel will petition the Court for an award of attorneys' fees and reimbursement of their costs.

**Who are the lawyers for the Class?** The following lawyers have been approved by the Court as Lead Counsel on behalf of the Class:

LABATON SUCHAROW LLP  
Bernard Persky  
Christopher J. McDonald  
140 Broadway  
New York, NY 10005

SPECTOR ROSEMAN & KODROFF, P.C.  
Jeffrey L. Kodroff  
Theodore M. Lieberman  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103

CAFFERTY FAUCHER LLP  
Patrick E. Cafferty  
Bryan L. Clobes  
1717 Arch Street, Suite 3610  
Philadelphia, PA 19103

HAGENS BERMAN SOBOL SHAPIRO LLP  
Thomas M. Sobol  
David S. Nalven  
One Main Street, 4th Floor  
Cambridge, MA 02142

CHIMICLES & TIKELLIS LLP  
Nicholas E. Chimicles  
Pamela S. Tikellis  
One Rodney Square  
Wilmington, DE 19899

**Can I have my own lawyer?** Yes, you can be represented by your own lawyer, but you will have to pay all of your own lawyer's fees and expenses.

**What happens next?** The Court has scheduled a trial for November 3, 2008, on the issue of whether to order defendants to end their alleged unlawful conduct. Other plaintiffs will be part of the same trial, including generic drug manufacturers, drug wholesalers and retailers, and one health insurance company.

**FOR FURTHER INFORMATION**

This Notice contains only a summary of the relevant court papers. Complete copies of the public versions of the pleadings, Court rulings and other filings are available for public review and copying at the Clerk's office, United States District Court for the District of Delaware, 844 North King Street, Wilmington, DE 19801.

Additional information about the case is posted on the website at [www.completeclaimssolutions.com/tricor](http://www.completeclaimssolutions.com/tricor), or you can call the Claims Administrator at \_\_\_\_\_. *Please do not contact the Court or the Judge.*

Dated: \_\_\_\_\_, 2008

Clerk  
United States District Court  
District of Delaware

# EXHIBIT B



*In re Tricor Indirect Purchaser Antitrust Litigation*  
C.A. No. 05-360 (SLR) (consolidated)

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PRESS RELEASE

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PRESS RELEASE

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PRESS RELEASE

**For Immediate Release**  
Month Date Year

**Contact:** Leigh Anna Thomure  
Kinsella/Novak Communications, LLC  
(202) 686-4111

## **Class Action Lawsuit May Benefit Purchasers of Drugs Containing Fenofibrate**

Wilmington, DE - The United States District Court for the District of Delaware certified a class action lawsuit concerning individuals and entities (such as employee health benefit funds or insurance companies) that paid for some or all of the purchase price of drugs containing fenofibrate. Fenofibrate is found in the brand-name drugs TriCor, Lofibra, Antara and Triglide, as well as generic versions of these drugs. Fenofibrate is used to lower cholesterol and triglycerides.

The lawsuit claims that Defendants engaged in unlawful anticompetitive conduct to prevent generic competition for cholesterol-lowering drugs that contain fenofibrate. This alleged conspiracy deprived doctors and consumers of an opportunity to choose lower-priced, generic versions of fenofibrate drugs. No question is raised about the safety or effectiveness of TriCor or other fenofibrate products.

The Court has certified this case as a Class Action. An individual or entity in the United States and its territories is part of the Class Action if they purchased, paid and/or reimbursed for products containing fenofibrate, including TriCor tablets and TriCor capsules, intended for consumption by themselves, their families, or their members, employees, plan participants and beneficiaries or insureds during the period from April 9, 2002 through such time in the future that Defendants' illegal conduct has ceased.

At this time, the lawsuit asks for an injunction under federal antitrust laws to prevent Defendants from continuing their alleged unlawful conduct. The Court has not decided the issues in this case, and has not yet decided whether to allow the class to ask for damages under state laws. There is no money available to Class Members at this time.

Class Members who wish to remain a member of the Class do not need to do anything at this time. Individuals and entities that are affected by the Class Action are automatically a part of the class and will be represented by the lawyers for the Class as approved by the Court. The outcome of the litigation will be binding on all Class Members. A right to opt out of the Class would become available to Class Members if and when the Court approves the Class to ask for damages.

For more information regarding the lawsuit and Plaintiffs' claims against the Defendants, please visit [www.xxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxx.com) or call 1-8XX-XXX-XXXX.

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